In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 338

GRACE GROVE SAPPINGTON AND LILLIAN GROVE SHANK, INDIVIDUALLY AND AS CO-EXECUTRICES UNDER WILL OF JESSIE B. GROVE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. 7a–19a) is not officially reported. The opinions of the court of appeals affirming the judgment of the district court (Pet. 19a–23a), and denying the petition for rehearing *en banc* (Pet. 24a–25a) are reported at 408 F. 2d 817.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1969 (Pet. 23a). A petition for rehearing and suggested rehearing *en banc* was denied on April 15, 1969 (Pet. 24a). The petition for a writ of certi-

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orari was filed on July 14, 1969. The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether decedent purchased certain securities from her husband's estate, so that she owned them in fee at her death and their value was includible in her gross estate for federal estate tax purposes.

STATUTE INVOLVED

Internal Revenue Code of 1954:

> SEC. 2033. PROPERTY IN WHICH DECEDENT HAD AN INTEREST.
>
> The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of the interest therein of the decedent at the time of his death.
>
> [26 U.S.C. (1958 ed.) 2033.]

STATEMENT

This case involves federal estate taxes of the Estate of Jessie B. Grove, Deceased, and the correctness of the holdings below that 7,684 shares of the stock of Flintkote Company, valued at $339,056.50, were includible in the Estate.

Eugene A. Grove, decedent's husband, died on October 12, 1929 (Pet. 8a). He was survived by his wife Jessie (decedent here) and four daughters. By his will he left his wife a life estate in "every-thing" he possessed (Pet. 8a). When he died he owned 114 shares of the stock of the M. J. Grove Lime Company, valued then at $22,800 (Pet. 9a). These shares,

as a result of the acquisition of that company by Flintkote, stock splits and stock dividends and after gifts by decedent, evolved into the 7,684 shares of Flintkote stock in issue.

Decedent died in 1962. The executrices of her estate, in filing an estate tax return on July 8, 1963, did not include the stock in her gross estate on the ground that only a life interest had passed to decedent under the terms of her late husband's will. The Commissioner, upon audit of the return, determined that decedent at the date of her death had owned these shares of stock outright. This determination was based on a finding that regardless of the will, decedent had acquired a fee in the stock by purchasing it from her husband's estate. Accordingly, and pursuant to Section 2033 of the Internal Revenue Code of 1954, the Commissioner included the value of the stock in decedent's statutory gross estate and asserted a federal estate tax deficiency against her estate based upon this inclusion. Petitioners paid the deficiency and filed a timely suit for refund of the tax in the United States District Court for the District of Maryland.

The district court acknowledged that the controlling question was "whether the decedent, Jessie B. Grove, was the owner in fee of certain shares of stock of the Flintkote Company, or whether at the time of her death she had no more than a legal life estate in such stock" (Pet. 7a). The court then found as a fact that decedent had owned the stock outright. It stated (Pet. 11a):

> After considering all the evidence in this case, including the exhibits, it is the opinion of this Court that Jessie B. Grove, *in fact purchased* from her husband's estate 114 shares of M. J. Grove Lime Company at the inventory value of $22,800. Such *purchase* was necessary to provide the estate with cash to pay the debts owed by Jessie's husband at the time of his death and to pay administration expenses. There was clearly not sufficient cash to pay the estate debts and expenses and the only way that cash could be raised was by selling the stock and bonds. By selling the stock of this particular company to the widow [decedent], the stock would be kept in the family and the debts and expenses could still be paid. * * * [Emphasis supplied.]

Accordingly, the district court held the stock to be includible in decedent's estate.

The court of appeals affirmed the judgment of the district court. With regard to the controlling finding of fact, it stated (Pet. 21a):

> Having due regard to the presumption of correctness which attaches to official records,[1] we cannot say that the district judge's ultimate finding was clearly erroneous. * * * [Footnote not in original.]

ARGUMENT

The decision below is correct. It turns solely on an evaluation of the evidence on which two courts below

[1] The district court had relied in part on an Orphans' Court order authorizing decedent's husband's estate to sell the stock to decedent.

have concurred. There is no conflict of decisions or any other ground for further review.

1. Both courts below found as a fact that decedent in 1930 had purchased from her deceased husband's estate the 114 shares of stock of the M. J. Grove Lime Company owned by decedent's husband at his death, which evolved by 1962 into the 7,684 shares of stock of the Flintkote Company.[2] Both courts below also found that none of these shares of stock (1) had passed to decedent under her late husband's will, or (2) had been distributed to her as her interest in her husband's residuary estate. This determination is clearly not one appropriate for review by this Court.

2. Petitioners' assertion (Pet. 1) that the finding that decedent owned the stock in fee at the time of her death "ignored a decision of the highest court of Maryland, holding that decedent '* * * was given an estate for life * * *'" in the stock, is without merit. Petitioners allude to *Shank* v. *Sappington*, 247 Md. 427, decided on July 12, 1967 by the Court of Appeals of Maryland. There the state court (somewhat belatedly) was called upon to undertake construction of decedent's husband's will in order to determine the nature, character and extent of decedent's interest in her husband's estate as of the date of his death. The court held that the will created a life estate in the property

[2] Supporting evidence included (1) the Orphans' Court order authorizing the sale of the stock to decedent, (2) registration of the stock certificates solely in decedent's name, and (3) treatment of the stock by decedent as hers alone (Pet. 13a).

passing thereunder.[3] The holding below neither ignores nor contradicts the state court decision.

Whether a life estate passed under the will is irrelevant once it is found on the evidence that decedent thereafter *purchased* the stock from the estate prior to the distribution under the will. That decedent acquired the stock by purchase rather than under the will is the crucial fact upon which the judgment below is based. The holding below does not turn upon the issue resolved by the state court, and the ultimate factual finding upon which the holding is based does not contradict the decision of the state court. Under these circumstances *Commissioner* v. *Estate of Bosch,* 387 U.S. 456, dealing with the extent to which federal courts in estate tax cases are bound by state court decisions on state law questions, is not applicable. The state court decision construing the will does not determine the factual issue in this case. As the district court noted it was "in no way binding or conclusive in the present case where the critical issue whether the widow received the stock by distribution or by way of purchase was [not] actually litigated [in the state courts]" (Pet. 16a).

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[3] Although the Maryland courts did refer to the stock in question as being a part of the property of Eugene A. Grove distributed under his will, the district court found that the Maryland court's reference to the stock in issue was (Pet. 17a):

> not even [based upon] a factual determination by the lower court. The crucial fact was admitted in the pleadings by parties who had much to gain from such admissions. No testimony was taken in that case as previously noted. It was submited on Bill and Answer.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969